IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 28TH JUNE 2007 / 7TH ASHADHA 1929

Bail Appl..No. 3894 of 2007(B)

(CR NO. 32/2007 of EXCISE RANGE OFFICE, SULTHAN BATHERY)

PETITIONER:

SARADHA, AGED 40 YEARS, W/O.MANI,
PULIMUKKU HOUSE, CHULLIYODE P.O.,
NENMENI, SULTHAN BATHERY, WAYANAD.

BY ADV. SRI.RAJESH VIJAYAN

RESPONDENTS:

STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI. S.U. NAZER, PUBLIC PROSECUTOR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 28/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.3894 of 2007

Dated this the 28th day of June, 2007

ORDER

Application for anticipatory bail. The petitioner, a woman, faces allegations under the Kerala Abkari Act. 50 litres of wash was allegedly found concealed under the soil in her residential compound near a well. The excise party seized the same. At the time of seizure, her house was found locked. It is the case of the prosecution that the petitioner indulges in the illicit activity of making and selling illicit arrack. The alleged incident took place on 31.05.2007. Investigation is in progress. The petitioner has not been arrested so far.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. Totally false allegations are being raised against the petitioner without any justification. It is prayed that directions under Section 438 Cr.P.C may be issued in favour of the petitioner to save her from the undeserved trauma of arrest and incarceration in prison. The petitioner has no record of any criminal activity, submits the learned counsel for the petitioner.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the recovery has been effected from the property of the petitioner and all relevant inputs are leading and pointing to a reasonable inference of culpability against

the petitioner. There is no allegation even of any mala fides. In these circumstances, it is not necessary to invoke the extraordinary equitable discretion under Section 438 Cr.P.C. The petitioner must co-operate with the Investigator. She may not, at this early stage of investigation, be permitted to arm herself with an order of anticipatory bail. An honest attempt shall be made to ascertain the culpability of the petitioner which is indicated by the facts so far unearthed. There is no reason to assume that a proper and honest investigation will not be conducted, submits the learned Public Prosecutor.

4. I have considered all the relevant inputs. Powers under Section 438 Cr.P.C are to be invoked sparingly and in exceptional cases that too only in aid of justice. It is not to be invoked as a matter of course. Even the fact that a Court, if it were to consider an application for regular bail, may have granted regular bail on the materials collected, is no reason to justify invocation of the powers under Section 438 Cr.P.C. When the powers of arrest vested in the State and its officers are about to be invoked with malicious, ulterior and questionable motive, the powers under Section 438 Cr.P.C can certainly be invoked. In the facts and circumstances of this case, I find no reason to invoke such powers. This is a fit case where the petitioner must co-operate with the Investigator. She must appear

before the Investigator or the learned Magistrate having jurisdiction. She must apply for regular bail in the normal and ordinary course. I have no reason to assume that such application for regular bail to be filed by the petitioner shall not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific directions appear to be necessary.

5. This Crl.M.C is, in these circumstances, dismissed, but with the above observations.

(R.BASANT, JUDGE)

rtr/-